

1796

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE  
VOLUME 20

4

IN RE: IN THE MATTER OF :  
5 INTEGRATED RESOURCE :  
PLANNING FOR THE PROVISION :  
6 OF STANDARD OFFER SUPPLY : PSC DOCKET NO. 06-241  
SERVICE BY DELMARVA POWER &:  
7 LIGHT COMPANY UNDER 26 DEL.:  
C. SECTION 1007 (c) & (d): :  
8 REVIEW AND APPROVAL OF THE :  
REQUEST FOR PROPOSALS FOR :  
9 THE CONSTRUCTION OF NEW :  
GENERATION RESOURCES UNDER :  
10 26 DEL. C. §§ 1007(d) :  
(OPENED JULY 25, 2006) :

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13 Public Service Commission Hearing taken  
14 pursuant to notice before Gloria M. D'Amore, Registered  
15 Professional Reporter, in the offices of the Public  
16 Service Commission, 861 Silver Lake Boulevard, Cannon  
17 Building, Suite 100, Dover, Delaware, on Tuesday, May 22,  
18 2007 beginning at approximately 1:00 p.m., there being  
19 present:

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1 APPEARANCES:  
2 On behalf of the Public Service Commission:  
ARNETTA McRAE, CHAIR  
3 J. DALLAS WINSLOW, COMMISSIONER  
JAY LESTER, COMMISSIONER  
4 JOANN CONAWAY, COMMISSIONER

JEFFREY CLARK, COMMISSIONER

5

6 On behalf of the Public Service Commission Staff:  
GARY A. MYERS, ESQUIRE

7

8 On behalf of the Public Service Commission Staff:  
JAMES McC. GEDDES, ESQUIRE

9

10 On behalf of the Public Service Commission Staff:  
BRUCE H. BURCAT, EXECUTIVE DIRECTOR

11 MICHAEL SHEEHY, DEPUTY DIRECTOR

KAREN J. NICKERSON, SECRETARY

12 ROBERT HOWATT, PUBLIC UTILITIES ANALYST

13

On behalf of the Office of the Public Advocate:

14 G. ARTHUR PADMORE

JOHN CITROLO

15

16 On behalf of the Office of Controller General:

RUSSELL T. LARSON

17 JENNIFER COHEN

18

On behalf of the Department of Natural  
19 Resources and Environmental Control:

JOHN HUGHES

20 PHILIP CHERRY

21

On behalf of the Office of Management and Budget:

22 JENNIFER W. DAVIS

ROBERT SCOGLIETTI

23

24

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1 APPEARANCES CONTINUED:

2

On behalf of Delmarva Power and Light:

3 ANTHONY C. WILSON, ESQUIRE

GARY STOCKBRIDGE

4

5 GLENN C. KENTON, ESQUIRE

6

On behalf of NRG Energy, Inc:

7 MICHAEL HOUGHTON, ESQUIRE

CAROLINE ANGOORLY

8

9 On behalf of Bluewater Wind:

THOMAS P. McGONIGLE, ESQUIRE

10 PETER D. MANDELSTAM

11

On behalf of Conectiv:

12 DAVID ROSENSTEIN, ESQUIRE

RICHARD PURCELL

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1 CHAIR McRAE: With respect to this  
2 docket, we do have a number of people present. Some of  
3 them we have seen before, and others who may be new, at  
4 least, with respect to appearances in this process. We  
5 have the regulars with the Commission, who we already  
6 know. So, I will ask the other parties if they would  
7 identify themselves and their staff people that might be  
8 present for the record.

9 MS. DAVIS: I'm J.J. Davis. I'm the  
10 Director of Office of Management and Budget. And with me  
11 is Robert, or effectually known as Bert Scoglietti. He  
12 is the Director of Policy and External Affairs.

13 MR. LARSON: Russ Larson. I'm the  
14 Controller General. And with me is Jennifer Cohen.

15 MR. HUGHES: I'm John Hughes. I'm  
16 secretary of the Department of Natural Resources and  
17 Environmental Control. Behind me is the head of our  
18 Energy Office, Phil Cherry.

19 CHAIR McRAE: Commissioner Winslow, you  
20 might want to move that mic down.

21 MR. HUGHES: I'll yell.

22 CHAIR McRAE: Now, moving on. Here is  
23 what I propose as a line up for today's discussion.

24 We would first hear from Staff. Then we  
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1 would go to Delmarva. The Public Advocate I added based  
2 on your request from the last time, if you still want to  
3 operate in that sequence. And then we would move to the  
4 parties, which would include Bluewater, NRG, Conectiv,  
5 there will be opportunity for public comment.

6 Is there a sign-in sheet for that? Is  
7 Dave Bonar in the room. Because of the length of the  
8 proceedings, I do anticipate we will have to have some  
9 limit on the time for public comment.

10 Are you still deciding?

11 MR. CITROLO: No.

12 CHAIR McRAE: That being the case, and  
13 if we are clear on how the process will flow, I will ask  
14 Staff, Mr. Geddes, to start us out.

15 MR. GEDDES: Thank you, Madam Chair,  
16 Members of the Commission and Representatives of the  
17 other state agencies.

18 I believe for consideration today is a  
19 draft order that Staff prepared using the deliberations  
20 of the Commission and other agencies, but primarily the  
21 Commission's at its meeting on May 8, 2007.

22 The order was circulated to other  
23 interested parties and other participants in the process.

24 We received some comments. Comments  
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1 were received by the Department of Public Advocate, as  
2 well as some initial comments from NRG. Those comments  
3 were incorporated in the document.

4 There were additional comments that  
5 started coming in around 4:30 yesterday afternoon.  
6 Additional comments from NRG. Two sets of comments from  
7 Professor Firestone. Some comments from Mr. Muller this  
8 morning. Bluewater also submitted some comments, as  
9 well. Those comments were not included in the order for  
10 time reasons.

11 So, the order before you has the  
12 comments of the two parties mentioned. And, I believe,  
13 as is Staff's normal practice, we have tried to capture  
14 what we believe were the directions that the Commission

15 gave us in terms of drafting this order.

16 It is, as I always say, the Commission's  
17 order and the other agencies order, to the extent the  
18 other agencies want to support it. But historically, the  
19 Commission ask Staff to draft these orders, and then the  
20 Commission considers whether the drafted order is  
21 consistent with what the Commission's position is on the  
22 issues. And we have done that in the normal course.

23 CHAIR McRAE: Well, let me just say a  
24 few things before we proceed on that.

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1 There have been a few orders moving  
2 around with the revisions. And I would like to make sure  
3 we are all on the same page with respect to the order  
4 that we're discussing. I know one had 58 paragraphs.  
5 One has 60 paragraphs. I think the latest iteration is  
6 the 60 paragraph order.

7 MR. GEDDES: Madam Chair, as I'm sure  
8 you appreciate, when several people are working on a  
9 draft order at the same time, some errors do occur. The  
10 order, whether it has 58 paragraphs or 60, substantively  
11 is the same. The only thing that has changed is that the  
12 numbering has, or reflects a sequential numbering, rather  
13 than a repetitive numbering. That was caused because of  
14 the comments of the DPA, which I tried to incorporate  
15 yesterday, it created two additional paragraphs. I tried  
16 to be perfect, but for whatever reason, I didn't pick up  
17 the fact that I didn't sequentially change the other  
18 numbers. That was my error.

19 CHAIR McRAE: This isn't for purpose of  
20 a criticism, though.

21 Another component of the order is that  
22 it did reflect several actions on the part of the  
23 Commission that I think is appropriate for us to review  
24 and make clear versus what is presupposed rightfully from

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1 your recommendation and it was swept in. But I think we  
2 should look at that individually.

3 I need to make sure I'm referencing the  
4 right document for purposes of that. If the numbers have  
5 changed, then the references may not be the same. So,  
6 that really is my purpose in requiring.

7 MR. GEDDES: The report of that

8 correction is that in the draft orders that were  
9 circulated, the discussion starts at Paragraph 48. The  
10 current draft that is before you, that discussion starts  
11 on Paragraph 50, because in the history, two paragraphs  
12 were added to reflect concerns of the DPA.

13 CHAIR McRAE: Okay. Very fine.

14 Everyone heard that. Depending upon which one you had,  
15 you are looking at 48 or 50 when we get around to it.

16 MR. GEDDES: Substantively they are the  
17 same.

18 CHAIR McRAE: That's perfectly fine. I  
19 am clarifying things. Are you continuing? Have we  
20 gotten past the preliminary? Do you have additional  
21 comments that you want to offer at this time?

22 MR. GEDDES: No. Other than the fact  
23 that I think the order reflects the direction from the  
24 Commission and attempts to capture the deliberation. And  
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1 Staff supports it for your favorable consideration.

2 CHAIR McRAE: Okay. Delmarva.

3 MR. STOCKBRIDGE: Madam Chair. Members  
4 of the Commission and Representatives of the state  
5 agencies.

6 Good afternoon. My name is Gary  
7 Stockbridge. President of Delmarva Power. I appreciate  
8 the opportunity to be here and make a few comments. I  
9 promise they'll be short.

10 I thought I would start off by  
11 clarifying the record a little bit. There has been much  
12 made over the past several weeks of some headlines we  
13 made about we will not negotiate. I think we have been  
14 painted as quite the ogre as a result of those comments.  
15 And I would just like to talk briefly about the context  
16 of those comments.

17 It was just about a year ago in May of  
18 last year, the same residential and small commercial  
19 customers that we are talking about today experienced one  
20 of our significant rate increases they have seen in a  
21 very long time.

22 What they went through and the amount of  
23 conversations I had with those customers over the past  
24 year has left somewhat of an indelible mark around the  
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1 importance of keeping the price to these customers under  
2 control.

3 And it was in that context when asked a  
4 question when you are forced to enter into a contract  
5 that does not treat these customers fairly or is not the  
6 best contract for these customers what will you do.

7 And my response is, we will do anything  
8 within our power to stop that. And that's where the  
9 headline came from.

10 But I can assure you that the company  
11 does want to negotiate a contract that is the right  
12 contract for these customers as we move forward.

13 With respect to the order which we have  
14 reviewed, there is really only two comments I would like  
15 to make.

16 One is, in light of that experience, I  
17 just shared with our customers last year, and in light of  
18 all of my experience with the legislative process that  
19 lead to the crafting of House Bill 6, I personally and  
20 our company finds it very difficult to reconcile  
21 relegating price to a minor role in this proceeding. And  
22 it just goes contrary to everything we heard. And I  
23 can't believe that any part of House Bill 6 did not,  
24 first and foremost, get put there because it was a  
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1 concern about the price that was hitting our customers.

2 The second point I wanted to make, we  
3 applaud the Commission for keeping an open mind as to the  
4 need for backstop generation, new backstop generation for  
5 the wind farm.

6 As you may know, we have been adamant  
7 that we believe there are transmission solutions, very  
8 low cost transmission solutions that should be  
9 considered. And we think that you're keeping an open  
10 mind in, at least, allowing the process to have those  
11 discussions and offer alternatives is the right way to  
12 go.

13 Obviously, as we move forward, we will  
14 keep all of our options open. But I can tell you here,  
15 if the Commission, or the three state agencies request  
16 that we enter into negotiations, we will do so. And we  
17 will do so aggressively, and we will do so in good faith.  
18 And we will carry out those negotiations, and on behalf

19 of our customers, we will attempt to get the best price  
20 and best size wind farm we can for those customers.

21 We, again, appreciate the opportunity to  
22 make these comments this afternoon. Thank you.

23 CHAIR McRAE: Well, thank you for  
24 elaborating on your current state.

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1 Moving onto the Public Advocate.

2 MR. CITROLO: Yes. Thank you, Madam  
3 Chair.

4 As Mr. Geddes indicated, I spoke with  
5 his Black Berry last Friday and interacted with him on  
6 Monday and he did agree to accommodate our comments. I  
7 also had discussions with Bluewater Wind, and at this  
8 point, we're okay with the order, especially since it  
9 already adopts our position.

10 Thank you. We don't have anything else  
11 to say today about the order.

12 CHAIR McRAE: Next we have Bluewater  
13 Wind.

14 MR. McGONIGLE: Madam Chair. Members of  
15 the Commission and Representatives of the state agencies.  
16 My name is Tom McGonigle with the law firm of Wolf Block.  
17 I have with me Peter Mandelstam, President and CEO of  
18 Bluewater Wind.

19 We are in support of the proposed order.  
20 We did file comments this morning in opposition to the  
21 suggested changes from NRG that were filed yesterday  
22 afternoon.

23 If the Chair would like us to address  
24 those concerns that we have with NRG's suggested changes,

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1 we can do that now, or if you rather hear from NRG first,  
2 it is whatever your preference is.

3 CHAIR McRAE: Are the comments those  
4 that you submitted because I did have an opportunity to  
5 review them?

6 MR. McGONIGLE: Yes. Just as we  
7 submitted writing this morning.

8 CHAIR McRAE: Did all of the parties  
9 receive all of the comments? So, if you would just like  
10 to summarize at this juncture.

11 MR. McGONIGLE: Madam Chair. The



12 concerns are really both with the suggested changes to  
13 the factual background and the suggested changes to the  
14 discussion background.

15 With respect to the factual background,  
16 we think it is more appropriate for Staff to create that  
17 background. Obviously, if Bluewater had wanted to, we  
18 could have probably picked sound bites and snippets to  
19 rearrange and revise that section to suit our purposes.

20 But it is our view that is really for  
21 Staff to do. And frankly, some of the suggested changes  
22 by NRG, as we indicated in our filing, were not supported  
23 by the record and were taken out of context. So, we  
24 would ask that you not adopt those changes.

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1 With respect to the changes to the  
2 discussion section, we do oppose the deletion of the  
3 so-called severability provision and the additional  
4 Paragraph 61, I think, that NRG is suggesting. We think  
5 those suggestions are unnecessary and also really do  
6 serve only to tie the state's hands.

7 But let me be clear. We do not object  
8 to the idea of a backup gas-fired facility. Our concern  
9 is, we just want to make sure these changes that are  
10 being suggested do not somehow empower a frustrated  
11 bidder to force his process.

12 In other words, we could have issued  
13 scenarios that, perhaps, down the road as negotiations  
14 ensue, both Conectiv and NRG come to a determination that  
15 the backup facility concept is not in their interest.  
16 And, in fact, it would be more in their interest for this  
17 whole process to end. We just want to make sure that if  
18 that were the case that they were not, essentially,  
19 allowed to support this process because of the language  
20 that's being suggested here.

21 So, what we suggested as an alternative  
22 in our proposal is that if the independent mediator were  
23 to determine that NRG or Conectiv were not operating in  
24 good faith, not negotiating in good faith, that

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1 independent mediator could suggest severability. Because  
2 what we're afraid of here is we're empowering, perhaps, a  
3 frustrated bidder to serve this process.

4 So, we would suggest that if the state

5 agencies are going in that direction that they, at least,  
6 modify NRG's suggestions with that in mind. Thank you.

7 CHAIR McRAE: I should have mentioned  
8 based on the fact that some of the participants have not  
9 been involved in prior proceedings in this matter --

10 MR. HUGHES: Can't hear you.

11 CHAIR McRAE: That some of the  
12 participants that have not been involved in prior  
13 proceedings may not have been informed of the fact that  
14 you can, at any time, you know, raise questions and  
15 clarification as presentations are occurring. So, just  
16 to lay that out.

17 I think the Commissioners are certainly  
18 well aware of that practice.

19 Okay. Is that, in essence, your  
20 comments?

21 MR. McGONIGLE: Yes.

22 CHAIR McRAE: NRG.

23 MR. HOUGHTON: Madam Chair. Members of  
24 the Commission. Representatives of the state agencies.

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1 My name is Michael Houghton from the law  
2 firm of Morris, Nichols, Arsht and Tunnell. I'm here  
3 today with Caroline Angoorly, Senior Vice-president of  
4 NRG to, briefly, discuss the suggested edits to the draft  
5 order, which NRG circulated yesterday at 4:30, and which  
6 in the rush of the information aid, apparently, created  
7 newspaper articles and a firestorm of counter  
8 submissions.

9 Let me begin by just noting quickly. I  
10 don't intend to rehash the changes that you find in our  
11 draft, which are modifications and/or new paragraphs,  
12 Paragraph 16, 21, 25, 55 and 64. The gist of it is,  
13 frankly, contrary to Mr. McGonigle's representation today  
14 in his letter, as well, all of our points, which go to  
15 reliability and the direct nexus and connection both in  
16 the independent consultant's report and Staff's  
17 recommendation to the need for and the benefit provided  
18 in terms of reliability for power in Delaware arising  
19 from the so-called hybrid proposal and the connection of  
20 gas and natural gas plant with a wind facility.

21 That's what this is all about. That is  
22 what those edits and suggested changes were. And it was

23 designed to accurately bolster and reflect the record.

24 I, frankly, don't know, and we can find

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1 out, whether Staff or any other party, besides those who  
2 have indicated objection, have any substantive objection  
3 or concern to a more pointed and focused reference in the  
4 record.

5 But we frankly --

6 CHAIR McRAE: Could you do this for me?

7 Could you, briefly, summarize what specific points you  
8 are referring to.

9 MR. HOUGHTON: Yes, Madam Chair. In  
10 fact, they are written on one piece of paper.

11 CHAIR McRAE: That's not what I'm  
12 looking at.

13 MR. HOUGHTON: Yes. No, I guess we  
14 could. But it wouldn't be as fun if it was all reduced  
15 to one piece of paper.

16 Paragraph 16 addresses record references  
17 specifically with respect to voltage reliability benefits  
18 of an IGCC facility and the importance of having, as a  
19 general matter, a supporting source of generation along  
20 with wind.

21 And we're not here advocating for an  
22 IGCC facility. To put it in a phrase, We got it. We  
23 understand where the process is. We have not walked away  
24 from IGCC. We believe it's a credible technology. We

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1 believe that, frankly, that would be the best solution  
2 here.

3 But we are not functioning as a  
4 disappointed bidder who is trying to throw a spanner into  
5 the process as who some at this table are presupposing  
6 we'll negotiate in bad faith to derail a process that  
7 we've all invested significant time, effort and money for  
8 a power generating company. We're at the table. We want  
9 to be at the table. We don't think we need a baby-sitter  
10 to sit and assess whether or not we are functioning in  
11 good faith, and, frankly, we resent the suggestion that  
12 is necessary.

13 But I've digress. That is Paragraph 16.

14 CHAIR McRAE: Briefly. That's what we  
15 said, right.

16 MR. HOUGHTON: Paragraph 21 and 25  
17 really deal with record support for what's deemed in the  
18 record as the synergistic benefit of wind coupled with  
19 gas turbines and the need for, quote, backup or firming  
20 power, unquote, natural gas, in this instance, to wind,  
21 which, quote, and this is a quote in the record, Wind may  
22 not be a reliable source of power on days when peak load  
23 is needed.

24 And if you refer to Paragraphs 21 and  
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1 55, you'll see that, again, record support for the  
2 concept. Independent consultant recommendation and Staff  
3 recommendation to the Commission that there should be a  
4 hybrid and coupling of these two, and there should not be  
5 a severability concept to it.

6 Paragraph 25, again, record support for  
7 the need to promote system reliability and the  
8 acknowledgment that there would be, again, in the record  
9 transcript reference, System stress if the so-called MAPP  
10 transmission system was delayed, or if the Indian Units 1  
11 and 2 were shut down. And Staff acknowledged the need,  
12 again, for a firming component of fossil fuel.

13 And Paragraph 64, what appears to be the  
14 most controversial, I guess, suggestion, was the  
15 suggestion from NRG that there be a deletion of a  
16 reference that prospectively, in order to provide for  
17 flexibility in the process, that there could be  
18 consideration of an all wind exclusive wind solution.

19 A thorough review of the transcript, I  
20 think, accurately reflects that the bulk of the  
21 discussion among the Commissioners and those at the  
22 proceeding two weeks ago centered on the notion of a  
23 hybrid, the notion of a necessary coupling between the  
24 wind component and natural gas component.

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1 As we construe the discussion among the  
2 Commissioners at the end of a rather long, deliberative  
3 process, there was the suggestion that at some point in  
4 time, perhaps, there could be a revisitation of the issue  
5 of wind exclusively.

6 We don't think, and the Commission will  
7 correct me immediately, I'm sure, if I'm wrong, we didn't  
8 think, we don't think, that it was the intent of the

9 Commission to decouple or to invite a decoupling of the  
10 natural gas firming component for wind, but it was a more  
11 generic and general discussion.

12 Frankly, the kind of reaction that the  
13 deletion of that language has brought from both Bluewater  
14 and others in this process really only confirms, I think,  
15 what many have suspected for a while, which is, the  
16 hybrid will only be a vehicle for Bluewater to try to get  
17 at the table and negotiate three, or four, or five, 600  
18 megawatts of power without any firming component. We  
19 don't think that's what's intended. That was not  
20 recommended by the independent consultant. It was not  
21 recommended by the Staff.

22 And, in short, we're not here today  
23 arguing for anything other than what we think the  
24 independent consultant had vigorously recommended, what  
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1 the Staff had supported, and what had been aggressively  
2 discussed at the last meeting. And we think it's a  
3 significant mistake.

4 We're accused, I think, of  
5 Mr. McGonigle's submission of a Trojan horse here. I  
6 think, frankly, that there's a Trojan horse in reverse  
7 working here. I think the kind of reaction and concern  
8 that has come up as a result of a deletion of a minor  
9 phrase at the end of the order proves out the kinds of  
10 concerns we had, and we think the state ought to have.

11 CHAIR McRAE: Well, I do believe, while  
12 I haven't looked at the transcript directly, I recall  
13 being the Chair who attempted to summarize what I thought  
14 I heard from my fellow Commissioners.

15 One of the things that I specifically  
16 recall, in fact, whether we address this further or not,  
17 is that Commissioner Clark asked that the motion include  
18 a severability of wind. That's what I understood the  
19 Commission to act on.

20 Now, that's not to say that that is the  
21 end of the discussion. But as far as the Commission  
22 vote, I am fairly certain that the record should reflect  
23 that that was, indeed, the vote of the Commission.

24 MR. HOUGHTON: Madam Chair, my only  
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1 response to that, and with all due respect, that may very

2 well be what the Commission intended, certainly what you  
3 intended. It's not unusual, in my experience, to have  
4 some difficulty at the end of a long session, when there  
5 is a motion and there is a summary, to, frankly, construe  
6 true exactly what the determination has been. We  
7 thought, in good faith, that we should raise the issue.

8 CHAIR McRAE: Commissioner Winslow.

9 COMMISSIONER WINSLOW: Thank you, Madam  
10 Chair.

11 You're correct, Mr. Houghton. But on  
12 the other hand, we're not very shy about speaking up.  
13 So, if she had misspoken with respect to what the intent  
14 of the Board was and the Commission was, I think someone  
15 would have asked for the intention of the Chair and made  
16 some correction to what the Chair was saying in terms of  
17 the summation.

18 Although I think you're right in the  
19 underlying premise with respect to the outcome, I think  
20 her comments did reflect, in my opinion, the Commission's  
21 intent.

22 COMMISSIONER CLARK: Madam Chair. I'm  
23 satisfied, if after we spoke and deliberated on the  
24 issues, at least my intent, and my understanding of, I  
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1 think it was Commissioner Conaway's motion was, that the  
2 wind issue was to be severable. And there was a  
3 preference to go through with regard to the firming  
4 component, and that was to be looked at necessarily.

5 But I think that the order with regard  
6 to the severability issue accurately reflects what the  
7 Commission wanted to do, and we voted on that motion.

8 CHAIR McRAE: Commissioner Winslow.

9 COMMISSIONER WINSLOW: Madam Chair, one  
10 other thought.

11 When NRG was speaking, and I heard the  
12 word gas turbine, that, frankly, changed my mind about  
13 how I was going to vote. And it also changed my mind  
14 because I thought it would inject some competition  
15 between NRG and Conectiv and come up with a positive for  
16 consumers of the state.

17 I feel the same way about the  
18 severability issue. That severability issue is out  
19 there. I think that's going to put some pressure on the

20 parties to come to a better resolution for the consumers  
21 of this state.

22 On the other hand, I don't want to come  
23 up with a zero at the end of the day either. I'm on  
24 board with the severability issue all of the way, 100  
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1 percent.

2 CHAIR McRAE: Do we have anyone else we  
3 need to hear from? Now we're into public comment, and  
4 then we'll come back to Staff. Oh, Conectiv. I'm so  
5 sorry. I didn't see you guys in the back.

6 MR. ROSENSTEIN: Thank you, Madam Chair.  
7 My name is David Rosenstein. General counsel for  
8 Conectiv Energy. And with me is Rich Purcell, project  
9 manager for our proposal.

10 It is interesting that you almost didn't  
11 see me because my first comment is, neither I, nor Mr.  
12 Purcell, or anybody else in our organization that I've  
13 able to determine, received a copy of the proposed order,  
14 or any of the responses of the proposed order.

15 So, we are sitting here at somewhat of a  
16 disadvantage today, if we're being asked to respond to  
17 it.

18 CHAIR McRAE: Where is Mr. Geddes?

19 I hardly know what to say in light of  
20 just what happened, but, perhaps, we can get  
21 clarification on this. That's what I just understood.

22 MR. BURCAT: My understanding, it went  
23 out to the service list.

24 MR. ROSENSTEIN: We're on the service  
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1 list. At least we thought we were on the service list.

2 MR. BURCAT: Bob Howatt sent it out to  
3 the service list.

4 MR. HOWATT: This is Bob Howatt for  
5 Staff.

6 It went out, I believe, it was  
7 Wednesday, because I was off. It was either Wednesday --  
8 yes -- Wednesday. And it went to three service list,  
9 including the newspaper. I have three service list. It  
10 was a click on the service list. And I apologize if you  
11 did not get a copy of it.

12 I know the state had been having some

13 deliverability problems with E-mails. I did not receive  
14 any mail notices that it was not delivered. So, I  
15 apologize for that.

16 MR. ROSENSTEIN: Both of us are shaking  
17 our heads saying we have not seen it.

18 But having said that, though, I would  
19 like to restate Conectiv Energy's interest and continuing  
20 to participate in this process.

21 If, in fact, we are asked to negotiate,  
22 we intend to negotiate. We continue to have an interest  
23 in doing the best we can do. Thank you.

24 CHAIR McRAE: Do you have something to  
1821

1 add?

2 Mr. Geddes.

3 MR. GEDDES: Madam Chair. I'm very  
4 surprised that this issue is coming up now because I had  
5 a conversation with a representative of Conectiv. The  
6 gentleman sitting to the left -- and I'm sorry -- I've  
7 forgotten your name. I apologize.

8 MR. PURCELL: Richard Purcell.

9 MR. GEDDES: Richard Purcell. Because I  
10 wanted to know -- the transcript did not properly reflect  
11 his designation as to what his title was. And so, I  
12 looked him up on the Internet. I called him so I could  
13 get his title correctly reflected on the order.

14 So, clearly, they knew that we were  
15 working on an order. And I'm surprised that they didn't  
16 realize that we would be circulating an order, which is  
17 our normal course before the meeting. I believe  
18 everybody knew that the Commission was going to consider  
19 this on the 22nd.

20 CHAIR McRAE: Well, from a standpoint, I  
21 hear you, and maybe that expectation is appropriate, but  
22 my sense is that they should be given an opportunity to  
23 review the order. That's not to suggest that the  
24 Commission is not going to act today, but it may be that  
1822

1 we will have to consider, if another issues raised out of  
2 the sequence, what we do with it. Because I really want  
3 everyone to come away from this process with an  
4 understanding that they've had an opportunity to be  
5 heard. I mean, we may certainly not agree. But clearly,



6 to have been heard.

7 So, we're going to proceed today,  
8 particularly since we do have several other  
9 decisionmakers present. And to the extent that an issue  
10 subsequently arises, I would think that the Commission,  
11 and that may mean the other agencies, depending on what  
12 may happen, would allow for consideration.

13 So, did you complete your statement?

14 MR. ROSENSTEIN: Yes. That was it.

15 Thank you.

16 CHAIR McRAE: Now, we will move onto  
17 public comment. I do have quite a list here. This table  
18 is going to be made available so people can hear. So, as  
19 I call your name to come forward, I'm going to impose a  
20 three-minute limit. I don't know where my timekeeper is.  
21 David Bonar. Is he in the room?

22 MR. SHEEHY: I will keep time for you,  
23 Madam Chair.

24 CHAIR McRAE: Thank you, Mr. Sheehy.

1823

1 Come forward and identify yourself for the record. I'll  
2 start with M.Q. Riding. This is Conectiv.

3 Is this another Conectiv person?

4 MS. RIDING: I did not ask to speak.

5 CHAIR McRAE: So, you thought you were  
6 signing an attendance list. Okay. Does that apply to  
7 the three other Conectiv people? The list is getting  
8 shorter right away. I think Tidewater is probably here  
9 for another matter. Well, I'm not sure how much on this  
10 list really is a list. Because Jeremy Homer is on there.  
11 That's another matter. Geoff Sawyer. And I know  
12 Ms. Angoorly who signed in. Mr. Houghton. The list is  
13 shortening. Gene Wayne.

14 MR. WAYNE: That's a no, Madam Chair. I  
15 took it as an attendance. It said yes and no at the end.

16 CHAIR McRAE: Okay. Fine. Well, here  
17 we are. Patricia Garity is the yes.

18 MS. GEARITY: Good afternoon, Madam  
19 Chair. Members of the Commission and agency  
20 representatives. Thank you for this opportunity. I will  
21 be brief.

22 I'm testifying today only on my own  
23 behalf because Citizens for Clean Power has not had an

24 adequate opportunity to confer regarding the proposed  
1824

1 orders.

2 I would say with respect to the order I  
3 have received in the last few hours, my primary concern  
4 is Paragraph 61. And I would encourage the Commission  
5 and State Agencies --

6 CHAIR McRAE: Wait. Paragraph 61.

7 MS. GEARITY: This is the one that  
8 begins, In the event Delmarva Power and Light reaches an  
9 agreement with Bluewater, and Conectiv, or NRG on a  
10 suitable long term PPA.

11 MR. GEDDES: It is Paragraph 59.

12 MS. GEARITY: I do apologize. I'm so  
13 sorry. That is the last one I had.

14 I would ask that the Commission do allow  
15 that if no contract can be reached for backup power with  
16 Conectiv or NRG, that Bluewater be permitted to go  
17 forward on an opportunity to proceed on a stand-alone  
18 basis.

19 I personally would have preferred to see  
20 that option remain as it was in the original order. But,  
21 I think, this is something that we could certainly live  
22 with.

23 We also say very emphatically, as a  
24 former mediator and arbitrator in Maryland, and with 15  
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1 years of experience in that area, I would say, given the  
2 conflicting interest of these parties, it is extremely  
3 important to retain that third party oversight, which has  
4 been in this order. I did notice it says periodic  
5 reports back. I'm not sure exactly what that means.

6 That might be something that you all want to consider  
7 tightening, whether it be bi-weekly, monthly, or  
8 whatever. Certainly, that's a very important point.

9 But I would ask a favor. It is sort of  
10 impertinent for me to do it as a member of the public.  
11 But I would ask if the Commission would consider setting  
12 a deadline for responses in the future with regard to  
13 proposed orders and other things. A deadline of, at  
14 least, three business days prior to the next hearing.  
15 Because this last-minute filing process really  
16 disadvantages not only the public, but, obviously, the

17 bidders and the agencies, of course, who need to have an  
18 opportunity to think through what's really going on here.

19 That concludes my remarks.

20 COMMISSIONER CONAWAY: I have a  
21 question.

22 Ms. Gearity, the form that you are  
23 reading from, would you go to the front page, please, and  
24 tell me which one it is?

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1 MS. GEARITY: My form reads, Final  
2 Findings, Opinion, and Order Number. And the last line  
3 references Mr. Geddes.

4 I believe that this is a draft that was  
5 from NRG.

6 COMMISSIONER CONAWAY: That's why you  
7 have Paragraph 61, and it reads a little bit differently  
8 than our Paragraph 59.

9 MS. GEARITY: Thank you, Madam Chair.

10 Is my point clear for the record?

11 CHAIR McRAE: Your point is absolutely  
12 clear.

13 I certainly sympathize with your  
14 position in terms of turnaround, which is very often  
15 driven by trying to sandwich in all of the other  
16 requirements in the process. It falls on the Commission  
17 in exactly the same way. I would think if you talk to my  
18 colleague that we complain and groan about our lost  
19 weekends all of the time.

20 So, it is a matter that is highly  
21 challenging because of tracks and schedules, and I am  
22 sure it is one that we'll be discussing ourselves. But  
23 recognizing that we do have some legislative constraints  
24 and also scheduling to get through processes. So, I hear

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1 you, and I fully understand. I'm almost in the same  
2 place, to be very honest.

3 MS. GEARITY: Thank you. Will the  
4 transcript be made available to the public from the May  
5 8th hearing? It has not been posted. I wasn't sure.

6 CHAIR McRAE: I would ask one of the  
7 Staff people to speak on that.

8 MR. HOWATT: I understand we had  
9 technical difficulties yesterday. There was an attempt

10 to post it yesterday, as was originally promised, and it  
11 did not happen. But, I believe, it was posted just this  
12 morning.

13 MS. GEARITY: Thank you.

14 CHAIR McRAE: Are there other public  
15 presenters? Ellen Lebowitz.

16 MS. LEBOWITZ: Thank you, Madam Chair  
17 and all of you. Thank you for the opportunity.

18 On May 8th, I expressed some concerns  
19 that given NRG's history of violations, litigation to  
20 forestall clean-up measures and so forth, we should be  
21 wary of NRG's willingness to negotiate in good faith with  
22 Delmarva Power to provide backup power.

23 And, indeed, in light of NRG's 11th hour  
24 comments proposing changes to the PSC order, these  
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1 concerns have been validated, once again. And so, I urge  
2 the Commission and all of the relevant agencies to check  
3 on the veracity of NRG's statements before considering  
4 any possible changes to the order.

5 As a citizen, I am very troubled by what  
6 I see as an attempt by NRG to subvert this process  
7 through their mischaracterization and even revision of  
8 the PSC recommendations. And I further urge all  
9 decisionmakers to proceed with the most appropriate  
10 course of action and adopt the order as it was presented  
11 by Staff.

12 I have read and adopted comments by  
13 Dr. Jeremy Firestone from this morning, May 22nd. And I  
14 note, in particular, the following mischaracterization or  
15 revision of the PSC Staff and Commission's May 8th  
16 recommendation.

17 CHAIR McRAE: Is this a  
18 mischaracterization by Professor Firestone?

19 MS. LEBOWITZ: No. NRG.

20 CHAIR McRAE: So, you're comparing it to  
21 the NRG document?

22 MS. LEBOWITZ: Yes. And it was said  
23 that they would like to add the following language.

24 NRG proposed to add the following  
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1 language. Staff's hope was that the firming portion of  
2 the hybrid proposal was not run as a base load unit, but

3 was clear that it would offset the availability of wind  
4 power for maybe 50, 60, or 70 percent of the time in  
5 order to meet increasing demand.

6 Now, what the transcript actually states  
7 is that we were hoping when put forth this proposal, the  
8 gas turbine would not run as a base load unit. It would  
9 add to carbon dioxide and global warming. But we were  
10 hoping that with the wind power and availability of wind  
11 power for maybe, 50, 60, 70 percent of the time.

12 And just to add to that, there is  
13 information in the docket, based on 20 years of wind data  
14 off of Delaware, that the wind power project would run at  
15 85 percent of the time. I just wanted to be bring that  
16 point, that specific point to the floor.

17 It would be unfortunate that the  
18 deciding agency would agree to the nonseverability of the  
19 wind project with the firming process to create a hybrid  
20 approach because it is very conceivable based on solid  
21 information that wind could provide all of the power  
22 necessary specific to this project.

23 However, what is unacceptable is to  
24 allow, that should Conectiv or NRG be unable to reach an  
1830

1 agreement, with Delmarva Power to provide firming power,  
2 Bluewater Wind would be tied to that failure.

3 Rather, what should occur and what is  
4 most reasonable, is that should Bluewater Wind and DP&L  
5 reach an agreement for primary power generation, but no  
6 agreement is reached between DP&L, and NRG, or Conectiv,  
7 Bluewater Wind should be able to go forward to provide  
8 this generation capacity for Delmarva Power and Light  
9 customers and additional firming power should be sought  
10 elsewhere.

11 NRG has sought and potentially somewhat  
12 succeeded in limiting the flexibility of the negotiations  
13 process, and by doing so has actively worked to prevent  
14 the best outcome for DP&L customers.

15 CHAIR McRAE: Excuse me. Are you  
16 reading, Mr. Firestone's comments?

17 MS. LEBOWITZ: These are mine.

18 CHAIR McRAE: I have allowed some  
19 latitude because, it looks like, the number of public  
20 people on my list, they were ghost speakers, if you will.

21 MS. LEBOWITZ: You want me to wrap it  
22 up.

23 CHAIR McRAE: Yes.

24 MS. LEBOWITZ: I just want to say as a  
1831

1 citizen living in Newark, Delaware, I am thrilled that  
2 DEMEC and Bluewater have entered into a contingency  
3 agreement to provide clean wind power to DEMEC customers  
4 of which Newark is a municipality.

5 And I think this shows the level of  
6 faith, desire and vision that most of us for beginning  
7 the critical task towards a clean and sustainable future  
8 where our children will benefit and not suffer from the  
9 decisions we make now with regard to our energy choices.

10 Again, I thank you very much for all of  
11 the public allowances you have made through the course of  
12 these months and all of the information you have  
13 incorporated into your deliberations. Thank you.

14 CHAIR McRAE: Are there any members of  
15 the public who wish to speak who did not sign the  
16 document?

17 MR. FURINTINO: My name is Michael  
18 Furintino. I'm Executive Director of Mid-Atlantic  
19 Environmental Law Center in Wilmington. And I have a few  
20 comment based on the actions of the Commission.

21 Generally speaking, I want to echo  
22 enthusiastic support with the results of the May 8th  
23 meeting. I think the Commission took a great step  
24 forward for the State of Delaware, for the health of the  
1832

1 citizens of Delaware and surrounding states, in fact, by  
2 putting forward the proposal that they have engaged in  
3 and indicating that the need for an engagement in  
4 negotiation between DP&L and Bluewater Wind.

5 A couple of things that I would note  
6 based on my review of the proposed order and the changes  
7 suggested by NRG.

8 We would urge that the Commission reject  
9 any of the significant substantive changes put forth by  
10 NRG.

11 To my extent, or to my belief, they  
12 appear to be simply adding in information that is not in  
13 any way essential to the understanding of what needs to

14 happen going forward, but in many cases appears to be  
15 self-serving.

16 We would also urge the Commission to  
17 maintain the severability provision with regard to the  
18 wind projects. We think that's also essential. We think  
19 there's already been good testimony on that today as to  
20 why that is important, particularly, from one of the  
21 Commissioners as to its ability to maintain competition  
22 going forward in this negotiation process.

23 Also, one of the paragraphs here, and I  
24 may not have the right paragraph number because I am  
1833

1 looking at a marked up document by NRG. But toward the  
2 end, 59, 60, 61, one of these paragraphs seems to  
3 indicate that there may be -- they are suggesting the  
4 ability of this process to be slowed down, even if there  
5 is successful negotiations between DP&L and Bluewater as  
6 to the second piece, which would be negotiations for a  
7 backup firming fossil source. And we would urge the  
8 Commission do not allow this whole process to be held up  
9 should there be problems with negotiation on that  
10 potential natural gas backup.

11 And lastly, I would urge the Commission,  
12 as you analyze going forward what's happening with these  
13 negotiations, that you consider using your statutory  
14 authority to compel negotiations to move forward in the  
15 event that there is a perception that good faith is not  
16 actually being carried out by some of the participants.

17 Clearly, this is essential based on the  
18 mandate that you have from the act to provide for price  
19 stability going forward and to improve the health,  
20 welfare of the citizens of Delaware. And that is  
21 somebody who generally focuses on air quality and air  
22 quality regulation.

23 I would indicate my belief that this is  
24 a great step forward, not only for the State of Delaware,  
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1 but regionally and nationally and may lead us to a great  
2 new energy future in which matters, such as global  
3 warming and struggles of people with respiratory problems  
4 would be addressed in a very effective manner.

5 So, thank you for your time and the  
6 opportunity, Madam Chair.

7 CHAIR McRAE: Thank you for your  
8 comments. I'm curious as to how NRG documents got more  
9 circulation. Almost as a reference point, we probably  
10 ought to use their distribution system.

11 Staff, do you have any comments before  
12 we go to the order?

13 MR. GEDDES: No summary comments, Madam  
14 Chair.

15 CHAIR McRAE: As I mentioned, and the  
16 Commissioners and other parties can take issue, I rather  
17 thought there were so many points in these various  
18 subsections that we ought to take some affirmative  
19 measure with respect to each of the items that are being  
20 proposed here, which, actually, go beyond -- I mean, what  
21 we ultimately said was that, perhaps, through what the  
22 recommendation provided, but I think it should be clearly  
23 articulated that that's what we're signing onto.

24 And for that purpose, we can start with  
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1 -- the document I marked up was 48, but I'll do 50, if it  
2 is the same thing. I don't know what everybody has.  
3 We'll do 50. I'll go with the 50 and just tie it to my  
4 48, which I marked.

5 MR. GEDDES: Madam Chair. I think there  
6 are extra copies if anybody in the audience is interested  
7 in following along.

8 CHAIR McRAE: Would you, Mr. Geddes,  
9 summarize what each of these items are, and we can  
10 address it from there.

11 Are we all situated? I didn't want to  
12 leave anyone out. Are we ready to proceed? All of the  
13 parties.

14 Starting with Paragraph 50. The summary  
15 of the action point here.

16 MR. GEDDES: Yes. Madam Chair. Members  
17 of the Commission. Other state agencies.

18 This first paragraph was an attempt to  
19 deal with sort of a global overarching issue. And that  
20 was whether Staff's proposal, the hybrid proposal, if you  
21 will, was consistent with the statute of House Bill 6.  
22 And it attempts to clarify why the Commission believes  
23 that it is. And there's an analogy here, on the latter  
24 of the paragraph, that suggest a bidder could change its



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1 proposal, and if that's true, to be more price stable and  
2 provide reliable energy, Staff believes that it should be  
3 able to as well and be consistent with the statute.

4 And so, it, in essence, tries to deal  
5 with that threshold issue that NRG and DP&L raised in  
6 your deliberations.

7 CHAIR McRAE: To the extent that you  
8 agree, I would say at the outset, I do agree with the  
9 reasoning provided there. But I, in fact, need a motion  
10 so that we act on this. We can have further discussion  
11 after.

12 COMMISSIONER WINSLOW: Madam Chair, I  
13 move that the Commission and the state agencies approve  
14 Paragraph No. 50.

15 CHAIR McRAE: Is there a second?

16 COMMISSIONER CLARK: Second. Point of  
17 order. Does it have to be seconded by someone other  
18 than --

19 CHAIR McRAE: I was about to ask. Let  
20 me say what we have done in the past.

21 It has been the Commission's motion and  
22 action, and the other agencies have --

23 MS. DAVIS: Seconded.

24 CHAIR McRAE: No. Not seconded. But in

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1 the voting process, and we've had this experience where  
2 the Commission has voted and in the voting process an  
3 agency has voted against the action, which effectively  
4 nullifies it.

5 So, certainly, you can second. But to  
6 the extent that it was the Commission's process, we have  
7 moved and seconded. And in the voting process, the  
8 agency has changed the outcome.

9 However, I'm amenable to an adjustment  
10 for a second. I don't know that that creates any issues  
11 for the Commission. I don't see a problem, unless  
12 there's a legal issue. And I'm looking at the various  
13 counsel for the Commission.

14 MR. BURCAT: Which I am not. Mr. Myers  
15 could probably speak to that.

16 CHAIR McRAE: Who is not present at this  
17 moment.

18 COMMISSIONER CONAWAY: Yes, he is. He  
19 is by the way.

20 MR. MYERS: My consistent advice to the  
21 Commission that each agency act separately.

22 CHAIR McRAE: Which would mean that the  
23 second would need to come from the Commission, but the  
24 voting by the agency would be considered. That's what

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1 we've been doing.

2 Secretary Hughes.

3 MR. HUGHES: Yes. I want to know exactly  
4 how the vote is called.

5 My understanding is that the Commission  
6 voting collectively either votes for or against by a  
7 preponderance of votes the motion on the floor. That  
8 point you call the question of the three agency.

9 The rules of the game are that any  
10 single agency casting a no vote means that the motion  
11 does not carry.

12 CHAIR McRAE: Yes. But let me just say,  
13 we didn't call a separate vote for the agencies. We  
14 voted, and to the extent that the agencies agreed, they  
15 voted along with us or disagreed. And when we call for  
16 the vote, it was the Commission vote and the agencies  
17 weighed in at that time if they voted.

18 So, let's say yea's came up, and we  
19 counted three Commissioners had an yea, but the Energy  
20 Office said, no, nea, then it was out.

21 Commissioner Winslow.

22 COMMISSIONER WINSLOW: Thank you, Madam  
23 Chair.

24 The only Comment that I would make is,

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1 after the motion is on the floor, if there is input that  
2 everybody wants to make from the state agencies, I would  
3 be very happy to hear it. We want to get that input and,  
4 obviously, modify a motion that's on the floor.

5 I would just ask that you're welcome to  
6 chip in at that point in time.

7 CHAIR McRAE: And I, certainly, do thank  
8 you for that clarification. Yes, indeed, that happens  
9 even with the Commissioners. It may influence the  
10 outcome of the vote.

11 Are we clear before I proceed further?  
12 MS. DAVIS: I think so.  
13 CHAIR McRAE: The first item of business  
14 had been disclosed. We had a motion and a second. So,  
15 it's really open for discussion at this point.  
16 If there is no discussion, then, all in  
17 favor.  
18 Yea.  
19 COMMISSIONER LESTER: Yea.  
20 COMMISSIONER WINSLOW: Yea.  
21 COMMISSIONER CONAWAY: Yea.  
22 COMMISSIONER CLARK: Yea.  
23 MS. DAVIS: Yea.  
24 MR. LARSON: Yea.

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1 MR. HUGHES: Yea.  
2 CHAIR McRAE: Opposed?  
3 Would you summarize the next item.  
4 MR. GEDDES: The next paragraph adopts  
5 the Staff's approach through a portfolio approach, which  
6 was a recommendation in Staff's report and also sets  
7 forth to the extent the Sustainable Energy Utility  
8 concepts are consistent with it, they should be adopted,  
9 as well.  
10 CHAIR McRAE: Motion on this.  
11 COMMISSIONER CONAWAY: So moved.  
12 COMMISSIONER CLARK: Second.  
13 CHAIR McRAE: Moved and seconded.  
14 Discussion.  
15 There being none, all in favor say yea.  
16 Yea.  
17 COMMISSIONER LESTER: Yea.  
18 COMMISSIONER WINSLOW: Yea.  
19 COMMISSIONER CONAWAY: Yea.  
20 COMMISSIONER CLARK: Yea.  
21 MS. DAVIS: Yea.  
22 MR. LARSON: Yea.  
23 MR. HUGHES: Yea.  
24 CHAIR McRAE: Opposed?

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1 The third item.  
2 MR. GEDDES: The third item is the need  
3 to have cited new generation in Delaware.

4 The example that is referred to, as I  
5 believe was provided in the record by Ms. Overland citing  
6 a town in California that had survived the ENRON debacle.

7 CHAIR McRAE: Is there a motion on this,  
8 Commissioners?

9 COMMISSIONER WINSLOW: Move it be  
10 accepted.

11 COMMISSIONER LESTER: Second.

12 CHAIR McRAE: Discussion. Hearing  
13 known. All in favor yea.

14 Yea.

15 COMMISSIONER LESTER: Yea.

16 COMMISSIONER WINSLOW: Yea.

17 COMMISSIONER CONAWAY: Yea.

18 COMMISSIONER CLARK: Yea.

19 MS. DAVIS: Yea.

20 MR. LARSON: Yea.

21 MR. HUGHES: Yea.

22 CHAIR McRAE: Opposed?

23 Next one.

24 MR. GEDDES: The next one deals with

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1 another sort of overarching issue that the Commission and  
2 other agencies grappled with and that was the issue of  
3 phrase and other factors. And talks about how the  
4 agencies can't completely inflate the ratepayers, and  
5 also need to consider other factors other than just  
6 price.

7 CHAIR McRAE: A motion.

8 COMMISSIONER CONAWAY: So moved.

9 CHAIR McRAE: Is there a second? Well,  
10 I certainly will second that. Any discussion. Call for  
11 a vote. All in favor say yea.

12 Yea.

13 COMMISSIONER LESTER: Yea.

14 COMMISSIONER WINSLOW: Yea.

15 COMMISSIONER CONAWAY: Yea.

16 COMMISSIONER CLARK: Yea.

17 MS. DAVIS: Yea.

18 MR. LARSON: Yea.

19 MR. HUGHES: Yea.

20 CHAIR McRAE: Opposed?

21 Next item.

22 MR. GEDDES: The next paragraph deals  
23 with the issue of Conectiv and whether Delmarva should be  
24 constrained to only negotiate with them since under the  
1843

1 bid evaluation they were the lowest bid. And, basically,  
2 states that the statute allows the agencies to look at  
3 other factors and suggest that Delmarva should not be so  
4 constrained.

5 CHAIR McRAE: Do I have a motion.

6 COMMISSIONER CLARK: So moved.

7 COMMISSIONER CONAWAY: Second.

8 CHAIR McRAE: Discussion.

9 COMMISSIONER WINSLOW: Madam Chair. The  
10 only comment I have here is, my recollection is that  
11 there was some additional rationale behind this. One was  
12 Conectiv didn't have a facility in the location that was  
13 thought preferable in Sussex County. And it was an issue  
14 with respect to gas lines --

15 CHAIR McRAE: Use the mic.

16 COMMISSIONER WINSLOW: My recollection  
17 is, there was additional rationale for this. One being  
18 the lack of gas line transmission to a Conectiv facility  
19 or area, like they have at Hay Road.

20 Also, I guess, the placement of the  
21 Conectiv facility in that area, like NRG had.

22 And, I guess, besides that, I agree with  
23 the paragraph. I will support the paragraph. I just  
24 want to make that part of the record.

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1 CHAIR McRAE: Very fine.

2 COMMISSIONER CLARK: Just along the  
3 lines of Commissioner Winslow, I mean, the other issue  
4 was the desire to make -- the potential take advantage  
5 of additional competition of bidders. If you got one  
6 bidder for the firming power that has a guarantee inside  
7 track, you might not have the best result, as if you have  
8 two running for the same position.

9 COMMISSIONER WINSLOW: I think, also, if  
10 I could chip in there again, with the expectation that,  
11 perhaps, NRG could do something positive if they win the  
12 negotiation, to do something positive in their plant for  
13 Units No. 1 and/or 2.

14 CHAIR McRAE: With that enhancement of

15 the record, are we ready to vote?

16 All in favor.

17 Yea.

18 COMMISSIONER LESTER: Yea.

19 COMMISSIONER WINSLOW: Yea.

20 COMMISSIONER CONAWAY: Yea.

21 COMMISSIONER CLARK: Yea.

22 MS. DAVIS: Yea.

23 MR. LARSON: Yea.

24 MR. HUGHES: Yea.

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1 CHAIR McRAE: Opposed?

2 Next one.

3 MR. GEDDES: Next paragraph has a few

4 different -- well, they are not different, but there are

5 a few concepts here.

6 CHAIR McRAE: You want to break them

7 down.

8 MR. GEDDES: I will try to address them

9 generally.

10 The issue here raised by Delmarva was

11 that the wind option was not the lowest cost. And also,

12 Delmarva was concerned that the hybrid model that the

13 Staff had suggested had some inherent risks.

14 But this paragraph goes onto suggest

15 that approving a wind project would be a clean, renewable

16 carbon free resource in Delaware. That in light of the

17 potential estimated increases in capacity cost of over

18 1,200 percent, that there was a need to, in essence,

19 address this issue as the Commission and the other

20 agencies were suggesting.

21 And then, the action item in the

22 paragraph is that direction to Delmarva to negotiate in

23 good faith with Bluewater Wind to obtain a long-term

24 purchase power agreement. And then, also, picks up

1846

1 Commissioner Winslow's concern that the negotiations not

2 be limited, but they show some flexibility with regard to

3 the actual size of the unit. But understanding that it

4 has to be sized correctly, but not wedded to that 200 to

5 300 megawatts that Staff had suggested in its report.

6 MR. HUGHES: I wish to recommend a

7 change.

8 CHAIR McRAE: Yes.

9 MR. HUGHES: Page 29, Line 11, beginning

10 with the words existing generation, for example, Oyster

11 Creek. After that, I recommend striking the word and,

12 going down to the next line, volatility of natural gas --

13 CHAIR McRAE: Could you hold on,

14 Secretary Hughes.

15 MR. HUGHES: Line 11. Existing

16 generation. Second to the last word in that line is the

17 word and after the parentheses.

18 The volatility of natural gas prices.

19 Take the period and make a comma out of it. And the

20 uncertainty surrounding the cost of carbon management.

21 I believe that to be one of the more

22 compelling reasons why we're considering wind.

23 CHAIR McRAE: It's actually an upgrade

24 because the order supposedly reflects actually what went

1847

1 on.

2 So, I think what we're talking about

3 here is an upgrade to what we might have originally

4 contemplated.

5 MR. LARSON: Madam Chair, if I can

6 support this. I believe the few words it took to

7 actually clarify the intent is important.

8 CHAIR McRAE: Absolutely. I'm not

9 disagreeing. I'm simply saying that we look at it an

10 enhancement beyond. I mean, it may not have come out in

11 this context in the order. I'm just clarifying that it

12 does, in fact, represent an addition for purpose of the

13 Commission.

14 Commissioner Winslow.

15 COMMISSIONER WINSLOW: Madam Chair.

16 Thank you.

17 I support that, as well. I believe that

18 although not stated that the words that were suggested by

19 Secretary Hughes were, obviously, very much in the

20 foremost of our thoughts and consideration.

21 So, I think that they are, as the Chair

22 said, very additive to this language. And I support the

23 change.

24 CHAIR McRAE: Is that in the form of a

1848

1 motion, perhaps?

2 COMMISSIONER WINSLOW: Yes.

3 CHAIR McRAE: Can I have a second on  
4 that?

5 COMMISSIONER CONAWAY: Second the  
6 motion.

7 CHAIR McRAE: All in favor.

8 Yea.

9 COMMISSIONER LESTER: Yea.

10 COMMISSIONER WINSLOW: Yea.

11 COMMISSIONER CONAWAY: Yea.

12 COMMISSIONER CLARK: Yea.

13 MS. DAVIS: Yea.

14 MR. LARSON: Yea.

15 MR. HUGHES: Yea.

16 CHAIR McRAE: Opposed? Very fine.

17 Moving on. That takes care of the

18 essence of that paragraph.

19 MR. GEDDES: Yes. And I assume at some  
20 point we'll have a break where, to the extent possible,  
21 we can conform the order to the vote. But moving on.

22 CHAIR McRAE: Moving on. Moving on is  
23 the operative word.

24 MR. GEDDES: I understand, Madam Chair.

1849

1 I need to move on.

2 The next paragraph deals with the hybrid  
3 concept. And the fact that Staff had recommended that  
4 there be some firming power. And this paragraph goes  
5 through a time frame for negotiation. The idea that  
6 Delmarva should be instructed to bid, or to conduct  
7 negotiations with all three bidders.

8 And also, the reasons why the  
9 Commission, the other agencies believe that this is an  
10 appropriate approach.

11 CHAIR McRAE: This is the one with the  
12 flexibility, as well?

13 MR. GEDDES: Correct. That being in the  
14 middle of Page 30, the idea that if there is another  
15 firming option that is better that take the parties be  
16 allowed to explore that.

17 CHAIR McRAE: Are we all clear here on  
18 this one? The direction that Delmarva proceed with the



19 negotiations, and, also, flexibility as to the size.  
20 And, I guess, that captures my attention because in one  
21 of the comments, an issue was raised as to what did the  
22 Commission intend by that language. I hope it is clear  
23 at this juncture that there was an upper limit in our  
24 thinking that the 600 was out there. But that we were  
1850

1 supporting something in the way of what staff had  
2 proposed, but didn't want to necessarily be locked in.  
3 Wanted to look at that as total numbers.

4 And, I think, Commissioner Clark, was  
5 that you? Someone did actually raise that issue that  
6 there be validity with respect to that ultimate number.

7 MR. GEDDES: The issue of flexibility,  
8 actually, I believe, was Commissioner Winslow and it was  
9 addressed in the prior paragraph.

10 CHAIR McRAE: But I recall someone's  
11 comments out there around that. I can't which of the  
12 parties, but somebody did. I wanted to make sure  
13 everybody understood what was being said there around the  
14 flexibility.

15 MR. GEDDES: In transcript cite 1791. I  
16 believe it was in your summary that it's reflected. I  
17 can certainly read it into the record.

18 CHAIR McRAE: No. It was one of the  
19 comments. I didn't have to do with the transcript or  
20 order. It was somebody's interpretation of that. I  
21 don't recall if it was NRG or specifically who, but I  
22 want to make sure we made that clear.

23 Commissioner Winslow.

24 COMMISSIONER WINSLOW: Madam Chair, I  
1851

1 move that we accept Paragraph 56.

2 CHAIR McRAE: Is there a second?

3 COMMISSIONER LESTER: Second.

4 CHAIR McRAE: Comments.

5 MR. LARSON: Yes. Madam Chair. Thank  
6 you.

7 I have a recommended addition. Before I  
8 discuss it, I would like to just precede that with a  
9 little background.

10 I'm representing a large, diverse group  
11 of people. Very diverse. And while I have a lot of

12 agreement for most of the recommendations, there were a  
13 couple of areas when I met with my constituency that  
14 there was definite concern. This is the first area. And  
15 as such, I would like to suggest some language be  
16 inserted. If I can read that and make a comment.

17 We're on Page 30. Is everyone on the  
18 same page? After the second line that ends with  
19 Bluewater period, I would like to read the following  
20 recommended addition, and then explain it.

21 Are you with me? I am looking at the  
22 Chair.

23 COMMISSIONER WINSLOW: Are you with him?

24 CHAIR McRAE: Yes, I am. I'm working

1852

1 from one document.

2 MR. LARSON: It happens a lot in my  
3 business, too.

4 The following addition, if I may. NRG's  
5 bid proposal may compare favorably due to NRG's  
6 preexisting location in Sussex County, obviating the need  
7 to site a new power plant outside of an existing  
8 brownfield (one of the criteria outlined under EURCSA.)

9 NRG's existing location may also serve  
10 to minimize the costs and siting issues associated with  
11 new supporting transmission. Use of NRG's existing power  
12 plant site for gas-fired backup generation may also  
13 incent the conversion of Indian River Unites 1 through 4  
14 to cleaner natural gas.

15 Now, if I can make a comment. This part  
16 of the proposal is an area of negotiation for backup  
17 only. That's clear. But I was also directed very  
18 specifically that the preference would be, all things  
19 considered, that something be done with NRG. It doesn't  
20 mean it's demanded. The language has been crafted in  
21 such a way that it says, This is where we would like to  
22 go. Obviously, you can negotiate with both Conectiv and  
23 NRG. But we do want backup, and we would like NRG  
24 considered.

1853

1 COMMISSIONER WINSLOW: Madam Chair. I  
2 believe the language that has been submitted by  
3 Mr. Larson is consistent with the facts on the table.

4 In other words, I don't believe there is

5 anything stated in that suggested change to the paragraph  
6 that was not testified to, or was not known to the  
7 Commission.

8 I do think all things are factors I  
9 would take into consideration. I think I mentioned a few  
10 of them myself earlier on in my comments. So, I have no  
11 objection to the suggested addition to the paragraph. My  
12 motion is changed.

13 CHAIR McRAE: It's amended to include  
14 the language?

15 COMMISSIONER WINSLOW: Yes.

16 CHAIR McRAE: How about a second on  
17 that?

18 COMMISSIONER LESTER: I will second  
19 that.

20 CHAIR McRAE: Somebody else had  
21 previously, if I recall.

22 All right. To the extent it was moved  
23 and seconded and we had discussion, is there any further  
24 discussion with respect to this change.

1854

1 COMMISSIONER CLARK: I would ask  
2 Mr. Larson to read it again because I absorbed about 85  
3 percent of it. I want to make sure I got it all.

4 MR. LARSON: I will certainly do that.

5 NRG's bid proposal may compare favorably  
6 due to NRG's preexisting location in Sussex County,  
7 obviating the need to site a new power plant outside of  
8 an existing brownfield (one of the criteria outlined  
9 under EURCSA.)

10 NRG's existing location may also serve  
11 to minimize the costs and sighting issues associated with  
12 supporting transmission. Use of NRG's existing power  
13 plant site for gas-fired backup generation may also  
14 incent the conversion of Indian Units 1 through 4 to  
15 cleaner natural gas. Totally under may, may, may, not  
16 shall, shall, shall.

17 CHAIR McRAE: I do believe that the  
18 comments reflect points that Ms. Angoorly offered at our  
19 meeting on May 8th that I think were embraced in summary  
20 discussion.

21 CHAIR McRAE: Well, we had a move and  
22 second. I don't know if further discussion is needed at

23 this time.

24 MR. LARSON: I just wanted to comment on  
1855

1 what I was proposing.

2 CHAIR McRAE: I think Commissioner  
3 Clark's question was clarified. He's not shy, I know  
4 that. So with that having been done, I will call for the  
5 vote.

6 All in favor. Yea.

7 COMMISSIONER LESTER: Yea.

8 COMMISSIONER WINSLOW: Yea.

9 COMMISSIONER CONAWAY: Yea.

10 COMMISSIONER CLARK: Yea.

11 MS. DAVIS: Yea.

12 MR. LARSON: Yea.

13 MR. HUGHES: Yea.

14 CHAIR McRAE: Opposed?

15 MR. GEDDES: Madam Chair. Members of  
16 the Commission and agencies.

17 The next paragraph is a short one, which  
18 directs Delmarva to report back on a weekly basis to the  
19 agencies. The idea being to keep everyone informed and  
20 to make sure negotiations are, in fact, taking place and  
21 moving forward. Of course, we heard from Mr. Stockbridge  
22 earlier, Delmarva plans to do this.

23 CHAIR McRAE: Yes. I do recall  
24 Mr. Houghton raised a concern about the need for this  
1856

1 provision.

2 However, my own view is out of an  
3 abundance of interest on the Commission's part as seeing  
4 this docket continues to move, we should document our  
5 strong views regarding the process. And in light of some  
6 of the history surrounding the whole discussion of  
7 negotiations. So, if there's a motion on this.

8 COMMISSIONER CLARK: So moved.

9 COMMISSIONER CONAWAY: Second.

10 CHAIR McRAE: Discussion. There being  
11 none, all in favor.

12 Yea.

13 COMMISSIONER LESTER: Yea.

14 COMMISSIONER WINSLOW: Yea.

15 COMMISSIONER CONAWAY: Yea.

16 COMMISSIONER CLARK: Yea.

17 MS. DAVIS: Yea.

18 MR. LARSON: Yea.

19 MR. HUGHES: Yea.

20 CHAIR McRAE: Opposed?

21 MR. GEDDES: The next paragraph does two  
22 things. One, it assigns to Delmarva the responsibility  
23 of managing supply resources unless it declines the  
24 responsibility which it must do so within 30 days. If  
1857

1 so, then an independent party would be appointed to  
2 supply or to be the resource supply manager.

3 The other thing is, the paragraph  
4 recognizes that the negotiations may be difficult and,  
5 perhaps, a third party might be approach to try to  
6 organize the parties and make sure that they proceed  
7 forward in good faith and report back again periodically  
8 to the Commission and the other state agencies and to  
9 make sure that the negotiations are conducted in good  
10 faith and in conformance with House Bill 6.

11 CHAIR McRAE: I do have a couple of  
12 clarifying questions on this.

13 When we talk about -- the first  
14 component of that that had to do with the decline to  
15 accept, if DP&L declined to accept such responsibility,  
16 that the course for the third party would be DP&L.

17 Is that a distribution concern, or  
18 separately as DP&L, the company, just so that I'm clear?  
19 It is a pass-through or what are we talking about here.

20 MR. GEDDES: I believe it would be an  
21 approach cost to pass through to customers. And it would  
22 not be appropriate to have the stockholders bear the  
23 cost.

24 CHAIR McRAE: Well, it just said DP&L,  
1858

1 and I assumed pass-through costs. But I just want to be  
2 clear that that's where we're heading.

3 The independent third party also cited  
4 that it's the same thing. It is another cost, pass  
5 through cost.

6 MR. GEDDES: I believe the incentive is  
7 that it would be a cost that would be passed through.

8 And I will say, the selection of this

9 individual should the agencies decide to do this is an  
10 important one. And Staff and others certainly have been  
11 thinking about them.

12 CHAIR McRAE: Well, let me just say  
13 first that if anyone feel there is a need to sever these  
14 two provisions, are you comfortable presenting a motion  
15 that embraces both? And if you are, of course, I will  
16 entertain such a motion.

17 COMMISSIONER WINSLOW: I move we approve  
18 Paragraph 58.

19 COMMISSIONER CONAWAY: Second the  
20 motion.

21 CHAIR McRAE: Discussions. There being  
22 none, all in favor.

23 Yea.

24 COMMISSIONER LESTER: Yea.

1859

1 COMMISSIONER WINSLOW: Yea.

2 COMMISSIONER CONAWAY: Yea.

3 COMMISSIONER CLARK: Yea.

4 MS. DAVIS: Yea.

5 MR. LARSON: Yea.

6 MR. HUGHES: Yea.

7 CHAIR McRAE: Opposed? Very fine.

8 MR. GEDDES: Paragraph 59 is also a  
9 short paragraph and is a contingency that in the event  
10 the negotiations are unsuccessful, the Commission will  
11 reconvene to consider whether regulated generation  
12 solution is appropriate. And, obviously, that would be a  
13 prospective regulation that would, obviously, not be  
14 retrospective, but to come together and see if there is  
15 some other way to, perhaps, provide generation on the  
16 Peninsula for customers.

17 CHAIR McRAE: Do I have a motion?

18 COMMISSIONER CONAWAY: Move we adopt  
19 Paragraph 59.

20 COMMISSIONER CLARK: Second.

21 CHAIR McRAE: Discussion. There being  
22 none, all in favor.

23 Yea.

24 COMMISSIONER LESTER: Yea.

1860

1 COMMISSIONER WINSLOW: Yea.

2 COMMISSIONER CONAWAY: Yea.

3 COMMISSIONER CLARK: Yea.

4 MS. DAVIS: Yea.

5 MR. LARSON: Yea.

6 MR. HUGHES: Yea.

7 CHAIR McRAE: Opposed?

8 MR. GEDDES: The last paragraph one is

9 one that has been discussed briefly before. It is what I  
10 refer to as Plan B. But the idea of providing  
11 flexibility that if, for some reason, other negotiations  
12 are unsuccessful, that the agencies will not foreclose  
13 consideration of wind power as a stand-alone supply  
14 option.

15 CHAIR McRAE: Commissioners. With  
16 regard to this provision. Do I have a motion.

17 COMMISSIONER WINSLOW: I move we accept  
18 Paragraph 60 and listen to our state agencies with  
19 respect to their opinion on that.

20 COMMISSIONER CLARK: I will second the  
21 motion.

22 CHAIR McRAE: Are you clairvoyant? It  
23 has been moved and seconded. Apparently, there is  
24 discussion.

1861

1 MR. LARSON: Madam Chair.

2 With respect to this particular section,  
3 there is language that we are suggesting not be included.  
4 It would be the language sort of in the middle of the  
5 paragraph and it says, In order to provide greater  
6 flexibility to the process, we will not foreclose  
7 consideration of wind power as a stand-alone supply  
8 option.

9 We would like to delete that. Again,  
10 I'm representing a pretty big body.

11 If I may comment.

12 CHAIR McRAE: Please do.

13 MR. LARSON: The principle reason that  
14 we are opposing this is from the beginning we have agreed  
15 with a portfolio approach, which, by very definition, is  
16 more than one provider.

17 And while we won't comment on what we  
18 think is the sustainability of wind or whatever, we do  
19 endorse the notion of a backup negotiated supplier for

20 energy.

21 COMMISSIONER WINSLOW: Recognizing the  
22 problems inherently present at this location, the  
23 legislature, I would just suggest to Mr. Larson, that we,  
24 obviously, the Commission, I believe, believes pretty  
1862

1 strongly there should be a backup gas firming generation  
2 facility in Sussex County. We believe that is the  
3 optimum.

4 On the other hand, the reason I feel so  
5 strongly in favor of the flexibility and severability  
6 clause is because I do not want the parties or one of the  
7 parties to lead us down a path that does not get us where  
8 we want to go, which is to place generation in Sussex  
9 County. And if we do, in fact, place wind in Sussex  
10 County, it does not mean we cannot subsequently place gas  
11 firming or peaking generation facility subsequent to that  
12 in Sussex County.

13 So, I have no problem amending and  
14 deleting that, as long as we have some language in here  
15 that permits us to come back and revisit it, if, in fact,  
16 my worries come to fruition.

17 If, for some reason, we just can't get  
18 this thing together, the ball of wax together because of  
19 certain negotiating problems, I want this body and state  
20 agencies to have ability to come back and say, Okay,  
21 we're going to go with the wind for right now and we are  
22 going to work on how to back that up in some other  
23 fashion since we can't do it -- who knows how that might  
24 happen.

1863

1 But I just think we need to have some  
2 pressure on the negotiating parties to make sure that  
3 they don't have the power and the leverage in their  
4 hands, but we have it right here at this table.

5 MS. DAVIS: Commissioner Winslow, with  
6 all due respect, isn't that what 59 articulates, in the  
7 event that continuing negotiations with Bluewater,  
8 Conectiv and NRG are unsuccessful?

9 UNIDENTIFIED SPEAKER: Can't hear you.

10 MS. DAVIS: I'm always accused of  
11 speaking too loudly.

12 Chair, do I need to be recognized?



13 CHAIR McRAE: No. That's fine. You  
14 took the lead on that.

15 MS. DAVIS: Madam Chair, my only  
16 comments to Commissioner Winslow, in 59, perhaps, the  
17 assurances he is seeking is already there. It discusses  
18 if DP&L negotiations with Bluewater, Conectiv and NRG are  
19 unsuccessful, perhaps, and/or, if that, again, allows you  
20 to --

21 CHAIR McRAE: Well, I do think there is  
22 a distinction there. It talks about a regulated  
23 generation solution, which is not exactly the same thing  
24 as being discussed here. That language regulated  
1864

1 pretends something quite different.

2 COMMISSIONER CLARK: That would be a  
3 Plan C, I think.

4 COMMISSIONER WINSLOW: Madam Chair.

5 CHAIR McRAE: Commissioner Winslow, go  
6 ahead.

7 COMMISSIONER CLARK: I apologize.

8 CHAIR McRAE: Commissioner Winslow.

9 COMMISSIONER WINSLOW: I believe  
10 Mr. Geddes wrote the language in that way because of the  
11 statute involved, house Bill 6.

12 I would have no problem accepting the  
13 deletion mentioned by Mr. Larson if we took out the word  
14 regulated in Paragraph 59.

15 Since I'm not voting against the entire  
16 legislative body today or next week, I would offer that I  
17 agree to an amendment of my motion to delete the language  
18 referenced by Mr. Larson, as well as having the word  
19 regulated deleted from Paragraph 59.

20 COMMISSIONER CLARK: As a point of  
21 order, Madam Chair, you would probably want to -- because  
22 that will then delegate the authority to the Commission  
23 -- if you don't address the language with regard to that.  
24 Maybe the language, along that vein, by the Commission  
1865

1 and the State agencies will reconvene.

2 COMMISSIONER WINSLOW: I'm not sure why  
3 you brought that to their attention. They may have been  
4 very happy with that language.

5 COMMISSIONER CLARK: I want the love to

6 be spread around.

7 CHAIR McRAE: Yes. Secretary Hughes.

8 MR. HUGHES: The question is, to me,  
9 Commissioner Winslow, this extension of our ability to  
10 make decisions collaboratively is an intelligent idea, is  
11 not encompassed in HB6, as I see it, unless we have a  
12 legal opinion that it is, then we have a power to work  
13 collaboratively again.

14 This is an end of things here today. We  
15 can continue on. I want to have that assurance.

16 CHAIR McRAE: Well, we do have Staff  
17 Counsel who can take a look at that.

18 I think the only question here is, does  
19 the legislation mandate that it be a regulated solution,  
20 or do we have alternatives beyond that?

21 MR. GEDDES: Well, I certainly think the  
22 Commission has alternatives beyond that. And I think the  
23 import and the purpose of the statute itself is to  
24 include state agencies in that process.

1866

1 The reason that we eliminated or did not  
2 include state agencies because it appeared it was going  
3 to be a regulated generator, then presumably the other  
4 agencies wouldn't be interested in that.

5 However, with the modification that's  
6 being suggested, I see no impediment in the statute that  
7 would preclude the Commission inviting the other agencies  
8 to participate in whatever that alternative solution  
9 might be.

10 MR. LARSON: Madam Chair, if I may.

11 Mr. Winslow, your suggestion of maybe an  
12 unsuccessful negotiation falls at what point in the  
13 process? Because at the end of this process, at the end  
14 of the negotiations, it all comes back to these four  
15 bodies again.

16 Is your concern addressed by the fact  
17 that this whole issue has to come back to the fewer  
18 entities, or does it not?

19 COMMISSIONER WINSLOW: I'm not concerned  
20 about it coming -- the whole issue coming back to this.  
21 Not at all. I welcome it to come back here if there was  
22 a problem, or if we have to vote on the acceptance of  
23 negotiated bid.

24 MR. LARSON: We do have to vote on it.

1867

1 COMMISSIONER WINSLOW: Well, I'm saying,  
2 there may not be a vote to vote on is my point. So,  
3 either way, yes, I support it coming back to the same  
4 group.

5 CHAIR McRAE: As articulated, the  
6 concern is, there is potential for the process to be  
7 flawed, if one so chose, and we end up with nothing.

8 And I think Commissioner Winslow, who is  
9 quite capable of elaborating for himself, is, therefore,  
10 providing at the end of the day, we have an option other  
11 than nothing.

12 COMMISSIONER CLARK: Madam Chair.

13 CHAIR McRAE: Yes, Commissioner Clark.

14 COMMISSIONER CLARK: I'm certainly open  
15 to talking and discussing and considering the other state  
16 agencies opinions here.

17 My concern, or my original thought was,  
18 when we went through this was, we spent so much money  
19 getting halfway across the river. And the question is,  
20 do we turn back, or do we go all the way across, and, at  
21 least, get the bidders' best bids out there so we have a  
22 package to evaluate and we can says, thumb ups or thumb  
23 downs.

24 You can probably summarize this best, if

1868

1 you take out total flexibility, or, if it's really  
2 solidified in this order that there is no severability  
3 here and there never will be, you will have to have two  
4 parties get to the other side of the river with you, or  
5 you're going to have nothing.

6 There's a lot of different diverse  
7 parties. This is just one person's thoughts. My  
8 thinking in going through this was to have the maximum  
9 amount of options available so the best package could get  
10 laid out there. And at the end of the day, I have some  
11 qualms and concerns about the size.

12 The firming power is certainly a big  
13 bonus. But then, if you taken them together as a  
14 package, you got a commitment to what becomes a bigger  
15 PPA. And that long-term hedging concern at that level  
16 causes me concern.

17 MR. LARSON: Madam Chair. If I can  
18 follow up. I don't mean to drag this thing on.

19 But if you read the entire paragraph  
20 with that piece that I mentioned being deleted, it's  
21 really a summary paragraph saying, Here is what we were  
22 limited to, or open to, or whatever and because of all of  
23 this, we came down through and we agree with the Staff  
24 reports and all of that.

1869

1 I could vote not to even have this  
2 paragraph because I'm not sure that it's an integral part  
3 of the process. It is more of an acknowledgment of how  
4 we got here.

5 When you throw in the language that is  
6 being considered about being stand-alone, now it veers  
7 off a little bit and says but, we're saying a little bit  
8 more in this paragraph than we were saying. Now, we're  
9 saying, Hey, all kinds of things are available.

10 Now, if it were not mentioned at all, it  
11 is up to interpretation.

12 COMMISSIONER CLARK: I'm not arguing  
13 with your point. But really, what the Staff report was  
14 that they be coupled together. So, if you don't have a  
15 little bit of a language leaving it out, that's where you  
16 are. I'm not saying that's right or wrong. I think  
17 that's the concern I have. It has to be brought forward  
18 as a policy decision as to what we're going to do.

19 CHAIR McRAE: Excuse me. I do believe  
20 that the proposed amended motion, which Commissioner  
21 Winslow put forth addresses your need which calls for the  
22 elimination of the language that was a concern to you and  
23 at the same time speaks to the change in taking away the  
24 regulated. And it also provides for the concerns that

1870

1 were expressed at our past meeting.

2 So, from my prospective, with those  
3 modifications, it could be a win/win without taking out  
4 the whole paragraph.

5 Secretary Hughes.

6 MR. HUGHES: I would say that the thrust  
7 in favor of Commissioner Winslow's position is generated,  
8 to my mind, by the tenor of Bluewater's comments in this  
9 room today. They seemed strident and deeply and bitterly

10 concerned. And I wish to see these negotiations profit.

11 And for that reason, I can support this

12 as an ultimate and only an ultimate option.

13 CHAIR McRAE: Commissioner Winslow.

14 COMMISSIONER WINSLOW: Madam Chair. May

15 I try my motion as amended and restate it and see if

16 everybody agrees to it.

17 CHAIR McRAE: Are you changing it

18 further than the last one?

19 COMMISSIONER WINSLOW: I believe maybe a

20 little bit. Yes.

21 With respect to Paragraphs 59 and 60, I

22 move that the language mentioned by Mr. Larson starting

23 with the word In on Line 4 of Paragraph 60 and ending

24 with the word option of Paragraph 60 be deleted its

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1 entirety.

2 With respect to Paragraph 59 that the

3 word regulated in the last line of that page be deleted.

4 And after the word reconvene, it should read, with the

5 respective state agencies, to reconsider whether a

6 generation solution... In that way, we would assure

7 there was some finality, or some perception by the

8 parties that, obviously, there's a recourse if there's

9 not a negotiated bid coming forth. And the state

10 agencies are definitely on board with the process, as

11 they had been all along and I think should lead to a

12 finality of this.

13 CHAIR McRAE: It pretty much sounds like

14 what you said. Just the language there...

15 MR. GEDDES: Point of clarification.

16 Could we substitute the word a

17 generation solution for another generation solution?

18 COMMISSIONER WINSLOW: Yes.

19 COMMISSIONER CLARK: Madam Chair. And I

20 would be supportive of that compromise as long as the

21 other state agencies are as well.

22 But I do have a question for

23 Mr. Geddes. That language in Paragraph 59 is pretty much

24 straight out of the statute with what our options are to

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1 be going forward.

2 I mean, does that necessarily need to be

3 stated separately in the order, if it is so well

4 delineated in the statute anyway.

5 MR. GEDDES: I don't believe so.

6 COMMISSIONER CLARK: With that  
7 clarification, I'm okay.

8 CHAIR McRAE: With the language as  
9 proposed by Commissioner Winslow -- well, now having  
10 expressed this as an amended motion and with a second on  
11 that --

12 COMMISSIONER CLARK: Second.

13 CHAIR McRAE: I do believe we've had  
14 ample discussion on it. I think we're on the same page.

15 Can I, at this juncture, call for the  
16 vote? All in favor.

17 COMMISSIONER LESTER: Yea.

18 COMMISSIONER WINSLOW: Yea.

19 COMMISSIONER CONAWAY: Yea.

20 COMMISSIONER CLARK: Yea.

21 MS. DAVIS: Yea.

22 MR. LARSON: Yea.

23 MR. HUGHES: Yea.

24 CHAIR McRAE: Opposed? There being  
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1 none.

2 Are there any other matters with respect  
3 to this docket?

4 MR. GEDDES: Not at the moment. Well,  
5 there are other issues, but not on today's agenda.

6 But with regard to the order, I think we  
7 are complete with the order. I am looking across the  
8 room to see --

9 CHAIR McRAE: Well, while you are  
10 looking across the room, Commissioner Winslow had a  
11 comment, and then Mr. Larson did. You can side-bar as we  
12 have further discussion.

13 Please don't leave the room because you  
14 may be needed.

15 COMMISSIONER WINSLOW: I just wanted to  
16 comment, it was interested to hear Secretary Hughes  
17 comments because he has not been here. So, I appreciate  
18 what he had to say.

19 I think what has happened here, we had a  
20 very, very aggressively argued docket. All of the

21 lawyers and all of the Staff members of each entity has  
22 really done a terrific job. And as Commissioner Clark  
23 and everyone knows, they spent an enormous amount of  
24 money in this process.

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1 So, it's very, very encouraging to me  
2 that we have come to a successful conclusion with state  
3 agencies on this order.

4 I have to confess, I don't want to see  
5 us back here unless there's a negotiated bid because it  
6 has been a long process.

7 And Bull Dog Wilson and Big Funnel  
8 Geddes, Windy McGonigle and Positively Gas Houghton have  
9 wore me out. I need a rest from them for a while.

10 CHAIR McRAE: Well, in that regard, the  
11 expression of openness on the part of Delmarva, in light  
12 of some of the prelude to some of our discussions I think  
13 does, in fact, lend to a more positive climate.

14 Commissioner Winslow is always good at  
15 remembering to recognize the efforts of people in the  
16 public, of course, I think who have, again, presented  
17 themselves to date deserve great kudos for spending  
18 considerable hours working with this.

19 And I have to say, it's not over. We  
20 still have a whole other piece of this. I can only say,  
21 Hang in there.

22 MR. LARSON: Madam Chair, if I may take  
23 a moment.

24 I would like to thank the Commission and

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1 the Staff for taking the lead on this whole process. It  
2 would have been very difficult for the three of us to  
3 coordinate that. You have a good system that, albeit,  
4 very formal. But that's okay.

5 I would also like to again, once again  
6 reiterate what you said and what I said earlier, there is  
7 another step in this process and that's final approval  
8 after negotiations.

9 As Mr. Winslow said, I would hope that  
10 there are some decisions to be made after the  
11 negotiation.

12 COMMISSIONER WINSLOW: That's  
13 Commissioner.

14 MR. LARSON: Commissioner. I'm so  
15 sorry, Dallas.

16 CHAIR McRAE: Well, also, here is an  
17 opportunity for some of you haven't been with us before,  
18 of course, certainly, feel free to add any comments you  
19 may wish to at this time. Anyone else, aside from  
20 Mr. Geddes who is a regular.

21 Mr. Geddes, then DPA, then we will  
22 follow through to Mr. Padmore.

23 MR. GEDDES: Madam Chair, Members of the  
24 Commission, other agencies.

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1 It was pointed out that, perhaps, a vote  
2 on the ordering paragraphs would be appropriate.

3 And I believe Mr. Larson has also  
4 indicated and for other members of the public, that this  
5 is, by no means, a signature on this order result in a  
6 contract that is going to be signed. The contract still  
7 has to come back, if there is a contract and whatever  
8 form it is, or contracts to these agencies for final  
9 approval.

10 CHAIR McRAE: Clean-up section you're  
11 talking about, the ordering paragraphs?

12 MR. GEDDES: Correct.

13 CHAIR McRAE: And for the benefit of our  
14 follow agencies, it's sort of a sweep provision that in  
15 the event that there was something we didn't specifically  
16 address, it's in the report. Unless we have taken some  
17 affirmative action to reject it, we're adopting it. I  
18 think we've all read pretty closely.

19 Can I have a motion in that regard.

20 COMMISSIONER CLARK: Point of order.

21 This is an order now of all of the agencies. I mean,  
22 shouldn't it be the Commission and agencies reserve the  
23 jurisdiction to enter such further order.

24 CHAIR McRAE: Did you hear that

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1 modification?

2 Our order says, The Commission reserve  
3 the jurisdiction. And Commissioner Clark is suggesting  
4 that it should say Commission and other agencies reserve  
5 the jurisdiction because they do, in fact, have some  
6 jurisdiction and authority in this matter, as well.



7 That's a proposed --

8 MR. GEDDES: Yes.

9 CHAIR McRAE: -- proposed change to the  
10 order.

11 MR. GEDDES: We will pick up that. We  
12 will pick up a signature change. We will pick up a  
13 signature block. And we will pick up the changes that  
14 you have just given us, and we will be back.

15 CHAIR McRAE: Very good.

16 But we still need a motion.

17 COMMISSIONER WINSLOW: So moved.

18 COMMISSIONER LESTER: Second.

19 COMMISSIONER LESTER: Yea.

20 COMMISSIONER WINSLOW: Yea.

21 COMMISSIONER CONAWAY: Yea.

22 COMMISSIONER CLARK: Yea.

23 MS. DAVIS: Yea.

24 MR. LARSON: Yea.

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1 MR. HUGHES: Yea.

2 CHAIR McRAE: Opposed?

3 Now, we also have the Public Advocate,  
4 before we end this. I thought I saw Mr. Padmore's hand  
5 up. Could we have your attention a little longer?  
6 Excuse me. Can we hear from the Public Advocate in  
7 connection with this docket?

8 PUBLIC ADVOCATE PADMORE: I congratulate  
9 the Commission and state agencies, this now super  
10 regulatory agency for handling a very complex assignment.

11 As we move on to the next phase, I would  
12 like to remind whoever will be doing that, of the  
13 Commission's fundamental role in the regulation of public  
14 utilities. And that is ultimate that you use just and  
15 reasonable rates for the ratepayers of Delaware. Just a  
16 reminder.

17 COMMISSIONER CONAWAY: Point well taken.

18 CHAIR McRAE: We certainly appreciate  
19 that reminder.

20 We are assuming the public will continue  
21 to remain engaged in the process and keep us informed of  
22 their reaction along with you.

23 Okay. Are there any more comments with  
24 respect to this docket?

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1           If not, I may suggest we take a short  
2 break, about five minutes.  
3           (The Public Service Commission Hearing  
4 was concluded at, approximately, 2:45 p.m.)  
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1           C E R T I F I C A T E  
2 STATE OF DELAWARE:  
3  
4 :  
5 NEW CASTLE COUNTY:  
6           I, Gloria M. D'Amore, a Registered  
7 Professional Reporter, within and for the County and  
8 State aforesaid, do hereby certify that the foregoing  
9 Public Service Commission Hearing, was taken before me,  
10 pursuant to notice, at the time and place indicated; that  
11 the statements of said parties was correctly recorded in  
12 machine shorthand by me and thereafter transcribed under  
13 my supervision with computer-aided transcription; that  
14 the Public Service Commission Hearing is a true record of  
15 the statements given by the parties; and that I am  
16 neither of counsel nor kin to any party in said action,  
17 nor interested in the outcome thereof.  
18           WITNESS my hand and official seal this

17 29st day of May A.D. 2007.

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GLORIA M. D'AMORE  
REGISTERED PROFESSIONAL REPORTER  
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